

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KENNETH P. DOYLE, SR.,)	Case No.: 1:24 CV 357
)	
Plaintiff)	JUDGE SOLOMON OLIVER, JR.
v.)	
ATHAN SARATOPOULOS, <i>et al.</i> ,)	
)	<u>MEMORANDUM OF OPINION</u>
Defendants)	<u>AND ORDER</u>

This case is the latest installment in a series of cases Plaintiff has filed against Athan and Despina Saratopoulos concerning ownership of the property at 3617 Towbridge Avenue in Cleveland, Ohio. *See Doyle v. Sarantopoulos*, No. 1:21 CV 982 (N.D. Ohio July 6, 2021); *Doyle v. Sarantopoulos*, No. 1:20 CV 2345 (N.D. Ohio Dec. 7, 2020); *Doyle v. Sarantopoulos*, No. 1:20 CV 2426 (N.D. Ohio Dec. 7, 2020); *Doyle v. Sarantopoulos*, No. 1:19 CV 2426 (N.D. Ohio Feb. 10, 2020); and *Doyle v. Sarantopoulos*, No. 1:17 CV 2583 (N.D. Ohio Feb. 9, 2018). Plaintiff previously claimed the Sarantopouloses promised to convey the Towbridge Avenue property to him in exchange for making repairs to the dwelling but did not fulfill their obligation under the agreement. Those actions were dismissed for lack of subject matter jurisdiction.

Here, Plaintiff appears to allege that he entered into a private arrangement with the Sarantopouloses to purchase the Towbridge Avenue property in installments paid over time. He contends that makes him a co-owner of the property. He alleges that the Sarantopouloses recently

sold the property to Tyra Foster despite having already sold it to him. He asserts that the sale is invalid. He does not specify the relief he seeks.

Plaintiff also filed an Application to Proceed *In Forma Pauperis* (Doc. No. 2). That Application is granted.

Although *pro se* pleadings are liberally construed, *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the Court is required to dismiss an *in forma pauperis* action under 28 U.S.C. §1915(e) if it fails to state a claim upon which relief can be granted, or if it lacks an arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319 (1989); *Lawler v. Marshall*, 898 F.2d 1196 (6th Cir. 1990); *Sistrunk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996). A claim lacks an arguable basis in law or fact when it is premised on an indisputably meritless legal theory or when the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at 327.

A cause of action fails to state a claim upon which relief may be granted when it lacks “plausibility in the Complaint.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 564 (2007). A pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). The factual allegations in the pleading must be sufficient to raise the right to relief above the speculative level on the assumption that all the allegations in the Complaint are true. *Twombly*, 550 U.S. at 555. The Plaintiff is not required to include detailed factual allegations, but must provide more than “an unadorned, the-Defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. A pleading that offers legal conclusions or a simple recitation of the elements of a cause of action will not meet this pleading standard. *Id.* In reviewing a Complaint, the Court must construe the pleading in the light

most favorable to the Plaintiff. *Bibbo v. Dean Witter Reynolds, Inc.*, 151 F.3d 559, 561 (6th Cir.1998).

Federal courts are courts of limited jurisdiction and, unlike state trial courts, they do not have general jurisdiction to review all questions of law. *See Ohio ex rel. Skaggs v. Brunner*, 549 F.3d 468, 474 (6th Cir. 2008). Instead, they have only the authority to decide cases that the Constitution and Congress have empowered them to resolve. *Id.* Consequently, “[i]t is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377(1994) (internal citation omitted).

Generally speaking, the Constitution and Congress have given federal courts authority to hear a case only when diversity of citizenship exists between the parties, or when the case raises a federal question. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). The first type of federal jurisdiction, diversity of citizenship, is applicable to cases of sufficient value between “citizens of different states.” 28 U.S.C. § 1332(a)(1). To establish diversity of citizenship, the Plaintiff must establish that he is a citizen of one state and all of the Defendants are citizens of other states. The citizenship of a natural person equates to his domicile. *Von Dunser v. Aronoff*, 915 F.2d 1071, 1072 (6th Cir. 1990). The second type of federal jurisdiction relies on the presence of a federal question. This type of jurisdiction arises where a “well-pleaded complaint establishes either that federal law creates the cause of action or that the Plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law.” *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983).

Diversity of citizenship does not exist in this case. The Complaint, as written, suggests that

the Plaintiff and Defendants are all citizens of Ohio. Federal subject matter jurisdiction cannot be based on diversity of citizenship.

If federal jurisdiction exists in this case, it must be based on a claimed violation of federal law. In determining whether a claim arises under federal law, the Court looks only to the “well-pleaded allegations of the Complaint and ignores potential defenses” Defendant may raise. *Mikulski v. Centerior Energy Corp.*, 501 F.3d 555, 560 (6th Cir. 2007). Here, Plaintiff is proceeding *pro se* and *pro se* plaintiffs enjoy the benefit of a liberal construction of their pleadings and filings. *Boswell v. Mayer*, 169 F.3d 384, 387 (6th Cir. 1999). Indeed, this standard of liberal construction “requires active interpretation … to construe a *pro se* petition ‘to encompass any allegation stating federal relief.’” *Haines*, 404 U.S. at 520. Even with that liberal construction, however, Plaintiff failed to properly identify a federal question in this case and none is apparent on the face of the Complaint. Plaintiff failed to establish a basis for federal subject matter jurisdiction. This case must be dismissed.

Moreover, this is the sixth case in seven years that Plaintiff filed against the Sarantopouloses to contest ownership of the Towbridge Avenue property. It is the sixth time that Plaintiff has been told by this Court that it lacks federal subject matter jurisdiction over this dispute between Ohio citizens over the ownership of property located in Ohio.

Up to this point, the Courts in this District have been tolerant of Plaintiff’s *pro se* filings; however, there comes a point when we can no longer allow Plaintiff to misuse the judicial system at taxpayer expense. Plaintiff has been permitted to waive payment of the filing fee for each of his six cases. Proceeding *in forma pauperis*, however, is a privilege, and not a right. *Wilson v. Yaklich*, 148 F.3d 596, 603 (6th Cir. 1998). Federal courts may revoke or deny the privilege of proceeding

as a pauper when a litigant abuses the privilege by repeatedly filing frivolous, harassing, or duplicative lawsuits. *See In re McDonald*, 489 U.S. 180, 184-85 (1989) (per curiam); *Maxberry v. S.E.C.*, 879 F.2d 222, 224 (6th Cir. 1989) (per curiam); *Levy v. Macy's, Inc.*, No. 1:13-cv-148, 2014 WL 49188, at *4 -5 (S.D. Ohio Jan. 7, 2014); *Hopson v. Secret Service*, No. 3:12CV-770-H, 2013 WL 1092915, at *1-3 (W.D. Ky. Mar. 15, 2013); *Marshall v. Beshear*, No. 3:10CV-663-R, 2010 WL 5092713, at *3 (W.D. Ky. Dec. 7, 2010); *Haddad v. Michigan Nat. Bank*, No. 1:09-cv-1023, 2010 WL 2384535, at *2-3 (W.D. Mich. June 10, 2010). Plaintiff is cautioned that if he files another frivolous or repetitive action against the Sarantopoulouses or Tyra Foster, the Court may deny his Application to Proceed *In Forma Pauperis* and require him to pay the full filing fee of \$405.00 to proceed with his case.

Accordingly, Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. No. 2) is granted. This action is dismissed pursuant to 28 U.S.C. §1915(e). The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

April 16, 2024